

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

74-2032 Original

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CIVIL ACTION NOS. 74-2032 - 74-2033

ARCHIE CHESNEY*

Plaintiff-Appellee

v.

JOHN R. MANSON, ET ALS

Defendants-Appellants

On Appeal from the United States District Court for the
District of Connecticut

BRIEF OF APPELLANTS

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RELEVANT STATUTES

Section 17-183, Connecticut General Statutes	5 & 7
Section 17-194a, Connecticut General Statutes	1, 3, 4, 5 & 9
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STATEMENT OF ISSUES

1. Did the District Court for the District of Connecticut err in entering a Declaratory Judgment declaring Section 17-194a, Connecticut General Statutes, to be unconstitutional to the extent that it authorizes transfer of prisoners to mental health facilities under any conditions or circumstances that could not be applied to non-prisoners?

2. Did the District Court for the District of Connecticut err in dismissing the plaintiff's sundry claims of cruel and unusual punishment and denial of due process and in rejecting the plaintiff's claim for money damages? The specific issues to be raised under this paragraph are the subject of the Appellee's Cross-Appeal, since all of these claims were dismissed in the District Court and the Appellee has cross-appealed therefrom. The Appellants will cover the specific issues so raised by the Appellee in their reply Brief to the Appellee's Brief.

STATEMENT OF THE CASE

By Judgment dated June 26, 1974, the District Court for the District of Connecticut (Judge Jon O. Newman) granted the plaintiff's claim for declaratory relief and dismissed all other claims.

The declaratory relief ordered by the Court was set forth in paragraph two of said Judgment wherein the Court declared Section 17-194a, Connecticut General Statutes, to be unconstitutional.

Thereafter, upon the consideration of the oral motion of the appellants for a stay or modification of said Judgment, the District Court entered an Amended Judgment dated July 17, 1974, which amended paragraph two of the June 26, 1974, Judgment and declared Section 17-194a, Connecticut General Statutes, to be unconstitutional to the extent that it authorizes transfer of prisoners to mental health facilities under any conditions or circumstances that could not be used with non-prisoners.

That portion of the June 26, 1974, Judgment which dismissed all other claims was not amended.

The appellants have taken this appeal from that portion of the Judgment of the District Court as amended on July 17, 1974, which declares Section 17-194a, Connecticut General Statutes, to be unconstitutional to the extent that it authorizes transfer of prisoners to mental health facilities under any conditions or circumstances that could not be applied to non-prisoners.

The appellee has taken a cross-appeal from that portion of the District Court's Judgment of June 26, 1974, which dismissed all other claims.

The decision of the District Court is reported in 377 F. Supp. 887. The ruling of the District Court on the appellants oral motion to stay or modify the judgment is contained at pp.1-4, of the appellants' appendix.

The appellee is a prisoner confined in the Connecticut Correctional Institution, Somers. He is serving a life sentence for the crime of murder in the second degree. This sentence was imposed by the Superior Court for Fairfield County on June 4, 1971.

The appellee filed two complaints in the District Court (Docket Nos. 15308 and H-20). In each complaint he claimed to be deprived, by various officers of the Connecticut Department of Corrections, of various federally-protected rights within the purview of 42 U.S.C. 1983.

The same counsel were appointed in both cases and the two cases were tried as one case in the District Court.

One Memorandum of Decision was issued and one Judgment was entered covering both cases.

However, perhaps in an abundance of caution, the appellee's filed Notice of Appeal in each case and then moved, in this Court, to consolidate. By Order dated October 4, 1974, the cases were consolidated as one appeal with a further order allowing the filing of a single Brief and Appendix for the appeals as consolidated.

Since the appellants have appealed that portion of the District Court's

Judgment pertaining to Section 17-194a, Connecticut General Statutes, that issue only will be covered in this Brief.

The appellee will cover the issues raised by the appellants by way of a reply brief to the appellee's brief when it is possible to determine the issues which the appellee raises on his cross-appeal.

THE APPELLEE HAS FAILED TO ESTABLISH
A VIOLATION OF HIS CONSTITUTIONAL RIGHTS

The appellee is serving a life sentence for the crime of murder in the second degree. This sentence was imposed on June 4, 1971.

Section 54-125, Connecticut General Statutes, provides, in part, that:

"Any person confined in the Connecticut Correctional Institution, Somers, or the maximum security division of the Connecticut Correctional Institution, Niantic, for an indeterminate sentence, after having been in confinement under such sentence for not less than the minimum term, or, if sentenced for life, after having been in confinement under such sentence for not less than twenty-five years, less such time, not exceeding a total of five years, as may have been earned under the provisions of section 18-7, may be allowed to go at large on parole..."

Thus, the appellee is not eligible for parole until he has served twenty years on this sentence, that is, twenty-five years less a maximum of five years good time credit.

On two occasions he was transferred from the Connecticut Correctional Institution, Somers, to the so-called Security Treatment Center, which is an institution administered by the Connecticut Department of Mental Health.

These occasions were for the periods from January 19, 1973, to April 4, 1973, and from April 27, 1973, to May 7, 1973. (See testimony of Dr. VanderWerff, See Transcript of May 9, 1973 hearing, p. 65).

Such transfers were effected pursuant to the provisions of Section 17-194a, Connecticut General Statutes. This statute provides as follows:

"When, in the opinion of the commissioner of correction or the superintendent of the Connecticut School for Boys, any person confined under sentence of any court in any institution of the department of correction or in such school or held in a community correctional center pending disposition of his arrest has become mentally ill or appears to be mentally ill, said commissioner or superintendent shall, immediately, cause such person to be examined by a physician. If it appears from such examination that such person is mentally ill, the commissioner or superintendent, as the case may be, may, upon receipt of the certification of such physician and with the concurrence of the superintendent of such state hospital, transfer such person to a state hospital for the mentally ill, there to be safely kept until the expiration of the term for which such person was committed to such correctional institution, or until the disposition of his arrest, or until such person has recovered his sanity. At the time of such transfer, such physician shall present to the superintendent of such hospital a certificate to the effect that, in his opinion, such person is mentally ill and in need of hospital treatment. If the commissioner of correction is of the opinion that any inmate of the Community Correctional Institution, Somers so found to be mentally ill is a desperate or dangerous individual and that his transfer to or continued confinement in a hospital for the mentally ill would not be in the interests of the safety of the public, he may order such prisoner detained within or returned to the Connecticut Correctional Institution, Somers, and there confined under appropriate care and supervision. If, before the

expiration of the term for which such person was sentenced, or before the disposition of his arrest, as the case may be, such person, in the opinion of the superintendent of such hospital, has recovered his reason, such superintendent shall forthwith report the fact to the commissioner of correction or the superintendent of the Connecticut School for Boys, as the case may be, who shall cause such person to be transferred from such hospital and delivered to the proper authorities of the particular institution to which he had been sentenced or in which he was confined. This section shall terminate on certification by the mental health commissioner to the secretary of the state as required by section 17-257."

The Judgment of the District Court invalidated Section 17-194a to the extent that prisoners could be transferred to Mental Health facilities under any circumstances and conditions which could not be used for non-prisoners.

Thus, the District Court allowed the use of procedures for prisoners comparable to those provided for in Section 17-183, Connecticut General Statutes. This statute provides as follows:

"Any person who has suddenly become in need of care and treatment in a hospital for mental illness for a psychiatric disorder other than drug dependence who, the physician finds, is a danger to himself or others or for drug dependence when his condition is acute and creates pronounced danger to himself or to the community may be confined in such a hospital, either public or private, under an emergency certificate as hereinafter provided, for not more than fifteen days without order of any court, provided, if a written complaint for commitment of such person has been filed in a probate court prior to the expiration of such fifteen days, such confinement shall be continued under the emergency certificate for an additional thirty days, without further order, not more than forty-five days in

all, until the completion of the probate court proceedings, and provided the superintendent of such hospital shall immediately discharge any patient found not to be mentally ill or acutely drug dependent, or any person recovered from mental illness or acute drug dependence. At the time of delivery of such person to such hospital, there shall be left, with the person in charge thereof, a certificate, signed by a physician licensed to practice medicine or surgery in Connecticut and dated not more than three days prior to its delivery to the person in charge of the hospital. Such certificate shall state the date of personal examination of the person to be confined, which shall be not more than three days prior to the date of signature of the certificate, shall state the findings of the physician relative to the physical and mental condition of the person and the history of the case, if known, and shall state that it is the opinion of the physician that the person examined by him is in need of immediate care in a hospital for mental illness. Prior to hospitalization under the provisions of this section any person shall have the right to be examined by a physician of his own choosing, and if such physician concludes from his examination that such person is not mentally ill or acutely drug dependent, such person shall not be admitted to or detained in a hospital for mental illness under the provisions of this section. If a mentally ill person has been admitted to any state hospital for mental illness, the person in charge thereof shall cause proceedings to be instituted for the commitment of such person in the court of probate having jurisdiction in the town where such hospital is located. Any irregularity in the temporary confinement of such person shall be deemed cured by the adjudication of the court of probate ordering his commitment, and no such commitment shall be deemed invalid by reason of such irregularity. Except for voluntary admissions, if any person has been admitted to a private hospital for mental illness, the person in charge thereof shall, immediately upon delivery of such mentally ill person to such hospital, notify the commissioner of mental health, in writing. Said commissioner shall also be notified of the discharge of such patient before or at the termination of fifteen days or of the pending or completed commitment of such person to such hospital by a court of probate. Except as provided above or when otherwise pro-

vided by statute, no person shall be committed or admitted to or detained in a hospital for mental illness without an order of a court of probate, provided any person in need of care and treatment in a mental hospital may be received and detained therein for not more than fifteen days as provided in this section."

Since the Judgment of the District Court procedures identical in all relevant respects to the procedures set forth in Section 17-183, Connecticut General Statutes, above, have been followed with prisoner transfers.

This appellee is not entitled to raise the claim that his transfers to a Mental Health facility deprived him of equal protection of the law in that the statute which authorized this transfer does not afford him a hearing as is afforded non-prisoners.

This appellee was twice transferred to an institution administered by the Commissioner of Mental Health pursuant to this statute.

Both transfers were effected upon the orders of the psychiatric staff at Somers with the concurrence of the psychiatric staff of the Department of Mental Health. (See Transcript of May 9, 1973 hearing, pp. 52-81).

The appellants produced two psychiatrists, a physician and a psychologist at the trial. The appellee did not produce any testimony other than his own.

All of the testimony was that his transfers to the Security Treatment Center were, in all respects, medically proper and called for.

The appellee made no effort to refute these facts and does not even claim that at the time of these transfers he was not in need of such treatment.

Further, the appellee did not offer any evidence to show that he suffered any hardships from these transfers. For all the record of this trial shows is the appellee's situation at the Security Treatment Center was no different than his situation at Somers.

Therefore, what is happening in this case is that a person, who does not challenge the soundness of the medical judgment, and who does not show any injuries therefrom, seeks to challenge the constitutionality of the statute under which he was transferred.

The appellee's claim concerning loss of parole is without merit. He is just commencing a life sentence and must serve a minimum term of twenty years before he is even eligible for parole.

This case is not like Shuster v. Herold, 410 F.2d 1071 (2nd Cir., 1969) where a prisoner, who in all probability was sane, suffered decades of added confinement and sundry other grievous injuries.

Nor is this case like Baxtrom v. Herold, 383 U.S. 107, 86 S.Ct. 760 (1966), where an inmate about to be discharged from a prison term was civilly committed without the benefit of jury review enjoyed by other persons. The situation dealt with by the court in Baxtrom, supra, could not happen to the appellee because, pursuant to the provisions of Section 17-197, Connecticut General Statutes, the appellee could not be confined beyond the expiration of his sentence without a hearing as required by the District Court.

C O N C L U S I O N

In veiw of the foregoing, it is respectfully claimed that the appellee has not been denied the constitutional rights due to his transfer to a mental health facility, and that the District Court erred in declaring that Section 17-194a, Connecticut General Statutes, was unconstitutional in allowing such transfer under conditions and circumstances not afforded non-prisoners.

A P P E L L A N T S

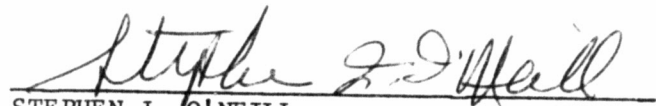
ROBERT K. KILLIAN
ATTORNEY GENERAL

A handwritten signature in cursive script, reading "Stephen J. O'Neill".

BY: STEPHEN J. O'NEILL
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C E R T I F I C A T I O N

This is to certify that two copies of the Brief and Appendix were mailed, via United States mail to Steven Wizner, Esq. and Michael Churgin, Esq., Yale Legal Clinic, 27 Wall Street, New Haven, Connecticut, this 7th day of November, 1974.

A handwritten signature in cursive script, reading "Stephen J. O'Neill", is written over a horizontal line.

STEPHEN J. O'NEILL
ASSISTANT ATTORNEY GENERAL

